No. 10-980

IN THE

Supreme Court of the United States

EVAN GRIFFITH,

Petitioner,

v.

DAVE REDNOUR, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

Petitioner, Evan Griffith, files this supplemental brief pursuant to Supreme Court Rule 15.8 to call to the Court's attention two recent decisions (one of this Court, and one of the Illinois Supreme Court), both of which were decided after the Petition for Certiorari ("Petition") was filed on January 26, 2011.

A. *Walker v. Martin*

On February 23, 2011, this Court issued its opinion in *Walker v. Martin*, __S.Ct.__, slip op. (Feb. 23 2010). *Walker* concerned California's time limitation on applications for post-conviction relief. Slip op. at 3-5. Governed by principles of federalism and comity, the Court concluded that the manner in which the California Supreme Court administered its timeliness requirement qualified as an independent state ground adequate to bar habeas corpus relief in federal court. *Id.* at 7-8. In the course of the Court's unanimous opinion, the Court noted several things which are of direct relevance to Griffith's pending Petition.

First, in footnote 5, the Court identifies the circumstances under California law by which a state court can accept an "untimely" post-conviction petition. Slip op. at 8. While not identical to the Illinois *instanter* procedure at issue here, the California procedure for excusing timeliness problems is similar. The implication of footnote 5 is that, if the state court finds the state post-conviction

petition timely (as the Illinois Supreme Court did here), as a matter of comity the subsequent federal filing will also be timely.

Second, the Court writes, "It would seem particularly strange to disregard state procedural rules that are substantially similar to those to which we give full force in our courts." Slip op. at 10 (quoting *Beard v. Kindler*, 558 U.S. __ (2009) (slip op. at 8)). Those words apply here. In Supreme Court Rule 13.3, this Court provides, among other things, that ". . . if the lower court appropriately entertains an untimely petition for rehearing . . ., the time to file the petition for a writ of certiorari for all parties . . . runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment." The Illinois Supreme Court – in granting leave to file Griffith's PLA *instanter* – invoked its own established state court procedure which is substantially similar, in effect, to Supreme Court Rule 13.3.

Third, the Court writes, "Sound procedure often requires discretion to exact or excuse compliance with strict rules, and we have no cause to discourage standards allowing courts to exercise such discretion." Slip op. at 12 (internal citations omitted). The import of this statement is apparent a few lines later, when the Court writes, "[it] would be particularly unfortunate" for habeas petitioners to lose the opportunity to argue that a procedural default should be excused through the exercise of such discretion. *Id.* Here, the Illinois Supreme

Court exercised its discretion to permit an *instanter* filing on account of extraordinary circumstances, thereby preserving its jurisdiction and making Griffith's PLA timely under Illinois law.

B. *People of the State of Illinois ex rel. Alvarez v. Skryd*

On February 3, 2011, the Illinois Supreme Court issued its opinion in *People of the State of Illinois ex rel. Alvarez v. Skryd*, __N.E.2d__, No. 110498, 2011 WL 329333 (Ill. Feb. 3, 2011). In *Skryd*, the Illinois Supreme Court reversed Judge Skryd, a trial court judge, and issued an extraordinary writ of mandamus. Judge Skryd had permitted a defendant to file an "untimely" motion to withdraw his guilty plea and resulting conviction twelve years after pleading guilty. *Id.* at 1. The Supreme Court ruled that, because the trial court's jurisdiction had long since lapsed, the trial court had no authority to address the defendant's motion on the merits.

The decision in *Skryd* demonstrates that, on issues of timeliness, the Illinois Supreme Court polices its own jurisdiction, and that of its lower state courts. When the Illinois Supreme Court sees good cause to grant relief – as it did in Griffith's case – it exercises its discretion to grant *instanter* filings and it preserves its jurisdiction. When the Illinois Supreme Court sees unacceptable delay – as in *Skyrd* – the Court enforces its jurisdictional mandates and denies review.

For the reasons set forth in the Petition, as further supported by the two new decisions referred to above, we respectfully request that this Court grant the Petition. As noted in footnote 9 of the Petition, consideration should be given to granting the Petition, vacating the decision of the Seventh Circuit, and remanding this case for consideration of the merits of Griffith's petition for writ of habeas corpus. The Court also may determine to grant certiorari, vacate the decision below, and remand for reconsideration in light of the opinion in *Walker*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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